

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARIN GATSON,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

Case No. C16-524-RAJ-JPD

REPORT AND RECOMMENDATION

Petitioner Darin Gatson has submitted to the Court for filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner indicates in his petition that he is seeking to challenge a 2016 King County Superior Court judgment and sentence. (*See* Dkt. 1-1 at 1.) Petitioner also indicates in his petition that his direct appeal is still in progress, and that none of his federal habeas claims have yet been presented to the state's highest court for review. (*See id.*)

A state prisoner is required to exhaust all available state court remedies before seeking a federal writ of habeas corpus. 28 U.S.C. § 2254(b)(1). The exhaustion requirement is a matter

1 of comity, intended to afford the state courts “an initial opportunity to pass upon and correct
2 alleged violations of its prisoners’ federal rights.” *Picard v. Connor*, 404 U.S. 270, 275 (1971)
3 (internal quotation marks and citations omitted). In order to provide the state courts with the
4 requisite “opportunity” to consider his federal claims, a prisoner must “fairly present” his claims
5 to each appropriate state court for review, including a state supreme court with powers of
6 discretionary review. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (citing *Duncan v. Henry*, 513
7 U.S. 364, 365 (1995), and *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999)).

8 As it is clear from the face of the petition that petitioner has not properly exhausted any
9 of his grounds for federal habeas relief at this juncture, his claims are not yet eligible for federal
10 habeas review. This Court therefore recommends that petitioner’s petition for writ of habeas
11 corpus and this action be dismissed without prejudice. This Court further recommends that
12 petitioner’s application for leave to proceed *in forma pauperis* be stricken as moot.

13 A petitioner seeking post-conviction relief under § 2254 may appeal a district court’s
14 dismissal of his federal habeas petition only after obtaining a certificate of appealability (COA)
15 from a district or circuit judge. A certificate of appealability may issue only where a petitioner
16 has made “a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C.
17 § 2253(c)(3). A petitioner satisfies this standard “by demonstrating that jurists of reason could
18 disagree with the district court’s resolution of his constitutional claims or that jurists could
19 conclude the issues presented are adequate to deserve encouragement to proceed further.”
20 *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, this Court concludes that
21 petitioner is not entitled to a certificate of appealability in this matter. A proposed order
22 accompanies this Report and Recommendation.

DATED this 18th day of April, 2016.

JAMES P. DONOHUE
Chief United States Magistrate Judge